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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/027,276	12/21/2001	James W. Finkowski	PIL0053/US	3057
33072	7590	03/16/2004		
KAGAN BINDER, PLLC SUITE 200, MAPLE ISLAND BUILDING 221 MAIN STREET NORTH STILLWATER, MN 55082				
			EXAMINER YEUNG, GEORGE CHAN PUI	
			ART UNIT 1761	PAPER NUMBER
DATE MAILED: 03/16/2004				

Please find below and/or attached an Office communication concerning this application or proceeding.

AS

<b>Office Action Summary</b>	Application No. 10/027,276	Applicant(s) FINKOWSKI ET AL.	
	Examiner George C Yeung	Art Unit 1761	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☐ Responsive to communication(s) filed on \_\_\_\_.
- 2a) ☐ This action is **FINAL**.      2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 1-54 ~~is/are~~ pending in the application.
- 4a) Of the above claim(s) \_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-37 and 41-49 ~~is/are~~ rejected.
- 7) ☒ Claim(s) 38-40 and 50-54 ~~is/are~~ objected to.
- 8) ☐ Claim(s) \_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All    b) ☐ Some \*    c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- |   |  |
|---|--|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)   | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. ____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)  | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)            |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)<br>Paper No(s)/Mail Date <u>2/21/02 and 5/1/03</u> | 6) <input type="checkbox"/> Other: ____  |

## DETAILED ACTION

### *Claim Rejections – 35 USC § 112*

Claims 1-31, 34-37 and 46-49 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicants regard as the invention for the following reasons:

1. Claims 1, 14, 19 and 31 are improper in the recitation of " an impacting device operatively supported by the frame." Note that the impacting device 46 is operatively supported by a slidable support member 74 and a latch shaft 66 (as shown in Figures 5, 10 and 11) and not by the support frame 16 which is used for supporting the conveyor 14 (as shown in Figure 3 and recited in claims 1 and 19, lines 3 and 4 of each).
2. It is not clear whether or not the term "the frame" recited in claims 2, 5, 6, 11, 20, 23 and 24, line 2 of each, refers to the support frame as recited in claims 1 and 19, line 3 of each. It appears that the impacting device 46 recited in claims 2, 5, 6, 20, 23 and 24 and the rolling device recited in claim 11 are pivotably connected to a support member 74 of a support structure 40 (as shown in Figures 5, 10 and 11).
3. Claims 4 and 22 are improper in the recitation of "the support frame" (line 2 of each claim). Note that the trigger device 49 recited in claims 4 and 22 is operatively mounted to a support structure 40 (as shown in Figures 5, 10 and 11)

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and not to the support frame 16 which is used for supporting the conveyor 14 (as shown in Figure 3 and recited in claims 1 and 19, lines 3 and 4 of each).

4. Claim 17 is improper in the recitation of "the chain being operatively supported by the frame" (lines 9-10). Noted that the chain 102 is operatively supported by a support member 100 (as shown in Figure 13) and not by the support frame 16 which is used for supporting the conveyor 14 (as shown in Figure 3 and recited in claim 17, lines 3 and 4).

5. There is no antecedent basis for "the latching mechanism" as recited in claims 34 and 46, line 2 of each.

6. There is also no antecedent basis for "the frame" as recited in claims 36, 37, 48 and 49, line 2 of each.

7. Claims 36 and 48 are also improper in the recitation of "the of impacting device" (last line).

### ***Claim Rejections – 35 USC § 102***

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 1, 2, 6, 10, 11, 13, 19, 20, 24, 28, 30, 32, 33, 37, 41, 42, 44, 45, 49 and 53 are rejected under 35 U.S.C. 102(b) as being clearly anticipated by Ostali et al (WO 86/02808).

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Claims 1, 10, 32, 41, 44, and 53 are rejected under 35 U.S.C. 102(b) as being clearly anticipated by Thornley et al (GB 2075906).

***Claim Rejections – 35 USC § 103***

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 12 and 29 are rejected under 35 U.S.C. 103(a) as being unpatentable over Ostali et al (WO 86/02808). It would have been obvious to provide the apparatus of Ostali et al with a chain mesh for rolling the part-rolled dough product since it is an obvious matter of structural design well within the skill of an ordinary artisan in the field of food technology. Moreover, it does not appear that the claimed use of a chain mesh as a rolling member is critical in view of page 29, lines 1-2 of the instant specification where it discloses "[p]referably, the drag chain 110 is a sheet of mesh type chain" (emphasis added). Preferred limitations, without more, are not critical. See *In re Rauch*, 156 USPQ 502.

Claims 14, 15, 43 and 54 are rejected under 35 U.S.C. 103(a) as being unpatentable over Ostali et al (WO 86/02808) in view of Kobayashi et al (EP 0746981). It would have been obvious to provide the apparatus of Ostali et al with a plurality of

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processing lanes since Kobayashi et al show the conventional expedient of employing an apparatus having a plurality of processing lanes for rolling up dough pieces.

***Allowable Subject Matter***

Claims 3-5, 7-9, 15, 16, 21-23, 25-27, 31, 34-36, 38-40, 46-48 and 50-52 are free of the prior art. These claims would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims and if the rejections under 35 U.S.C. 112 set forth in this Office action are obviated.

Claims 17 and 18 are free of the prior art. Claims 17-18 would be allowable if amended to overcome the rejection under 35 U.S.C. 112 set forth in this Office action.

***Prior Art Citation***

The Ueno et al patent is cited to show on apparatus for winding-up croissant dough pieces.

***Conclusion***

Any inquiry concerning this communication or earlier communications from the examiner should be directed to George C. Yeung whose telephone number is (571) 272-1412. The examiner can normally be reached on Monday-Friday from 10:30 AM to 7:00 PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Milton Cano can be reached on (571) 272-1398. The fax phone number for the organization where this application or proceeding is assigned is (703) 872-9306.

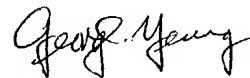
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Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is (571) 272-0987.

G. Yeung/af  
March 8, 2004



**GEORGE C. YEUNG**  
**PRIMARY EXAMINER**